IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2150 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN - Appellant(s)
Versus
BABUBHAI CHUNILAL PANCHAL & 1 - Defendant(s)

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Appearance :
MR HEMANT S SHAH for Appellant(s) : 1,
MR NILESH A PANDYA for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 05/02/2007

ORAL JUDGMENT

1. The Gujarat State Road Transport Corporation has preferred this appeal to challenge the judgment and award of MACT [Special] Vadodara dated 29th January, 1993,

whereby the Tribunal has awarded a sum of Rs.54,000=00 to respondent no. 1 original claimant, together with 15% interest from the date of the application till realization and proportionate costs. The claim in this appeal is restricted to Rs.25,000=00.

2. The accident in question occurred on 25th January, 1989. According to respondent no. 1 he was standing at the bus-stand at Vadodara for boarding the bus to Umreth. It was around 8:30 in the morning. At that time, the driver of the S.T, bus bearing registration no. GRU 9218 i.e., respondent no. 2 took the vehicle in reverse. According to respondent no. 1, the driver was negligent in taking the vehicle in reverse and the bus knocked down respondent no. 1. His leg was run over by the bus and he sustained fracture. He, therefore, was removed to SSG hospital at Vadodara and he had to undergo medical treatment for considerably long period. Hence, he filed the aforesaid petition for claiming compensation of Rs. 1 lakh.

3. The appellant resisted the claim by filing written statement at Exh. 19. It was averred that when the driver of the bus was taking the vehicle in reverse, a group of passengers hurriedly tried to board the bus

and in the process respondent no. 1 fell down and received injuries. According to the appellant, the injury was caused to respondent no. 1 because of his own negligence.

4. The Tribunal on the basis of the material produced before it held that respondent no. 1 i.e., the driver of the bus was negligent and the accident occurred solely due to his own negligence. The Tribunal further determined the compensation at Rs.54,000=00. Hence, this appeal. I have heard Mr. Hemant Shah learned advocate for the appellant and Mr. Nilesh Pandya learned advocate for respondent no. 1. It is submitted by Mr. Shah that the finding on the issue of negligence given by the Tribunal is erroneous. According to him respondent no. 1 sustained injuries due to his own negligence since he tried to board the bus while it was in motion. He has submitted that the Tribunal has not given due weightage to the documentary evidence in the form of F.I.R., lodged with the Police in connection with the present incident, wherein respondent no. 1 who was the first informant, himself has admitted that he was trying to board the bus while it was being taken in reverse. He has submitted that the disability assessed by the Doctor at 20% is on higher side. He has submitted that the Tribunal has erred

in awarding Rs.6,000=00 under the head of expenses for medical treatment. Lastly he has submitted that the rate of interest awarded by the Tribunal is also on higher side. As against that Mr. Pandya has supported the judgment and has submitted that no interference is required by this Court.

5. Having given careful consideration to the submissions of the learned advocates and having closely perused the record and proceedings of the case, it appears that there is no dispute with regard to occurrence of the accident. The dispute is with regard to the manner in which the accident took place. According to the appellant, respondent no. 1 tried to board the bus when it was being taken in reverse and in the process he fell down and sustained injuries, since the rear wheel of the bus ran over his leg. As against that the say of respondent no. 1 is that the door of the bus was kept open and respondent no. 2 – the driver took the bus in reverse in speed. As a result of that, he was hit by the door and he fell down and the rear wheel of the bus ran over his leg. The appellant has given evidence on oath before the Tribunal. He has reiterated this version in his evidence also. He has denied the submission that he fell down as there was rush to board the bus when the bus

was still in motion and when it was being taken in reverse. As against that, the driver of the bus i.e., respondent no. 2 has given evidence at Exh. 26 and he has stated that when he was taking the bus in reverse respondent no. 1 tried to enter the bus and he lost his balance and he fell down. He has also submitted that the conductor of the bus was giving signal by ringing the bell. The Tribunal however, found that the door of the bus was open and it was the duty of the driver to see that when the bus was being taken in reverse, the door remained closed so as to prevent entry of the passengers till the bus came to halt. The Tribunal has also found that if the conductor had remained outside the bus for giving signal of clearance, such accident would not have happened. The conductor is not examined. In view of the same, it appears that the conclusion drawn by the Tribunal on this count is reasonable and it is not required to be disturbed. I therefore, agree with the finding given by the Tribunal on the issue of negligence.

6. So far as the disability is concerned, certificate has been given by Doctor who is attached to the SSG hospital. It is a government hospital. In view of the same, there is no reason to doubt the certificate merely because it is not very clear whether the Doctor

who issued the certificate is Orthopedic Surgeon. It does not mean that the certificate issued by him is faulty. On that count also the submission of Mr. Shah is rejected.

7. So far as the third submission with regard to medical expenses is concerned, the record shows that respondent no. 1 had sustained serious injuries namely fracture of the leg since the rear wheel of the bus had run over his leg. It has also left a permanent defect and the resultant disability of 20%. Hence, it is very natural that respondent no. 1 would have spent substantial amount for his treatment. The Tribunal has awarded Rs.7,000=00 for medical expenses as well as special diet. In my opinion, this amount can never be said to be exorbitant. It is most reasonable and the Tribunal was justified in awarding it to respondent no. 1.

8. This brings me to the last submission of Mr. Shah about the rate of interest. The Tribunal has granted interest at the rate of 15%, which obviously is on higher side. The award is dated 29th January, 1993. Around that time, the rate of interest ordinarily awarded by the Tribunal was 12%. Hence, to that extent the submission of Mr. Shah is required to be accepted. The rate of interest

is, therefore, reduced from 15% to 12%. The Tribunal is, therefore, directed to refund to the appellant the excess amount within a period of six months from the date of this judgment.

9. Thus, this appeal is partly allowed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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